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4 DAVID CHARLES MOON,  
5 Petitioner,  
6  
7 v.  
8 DAVID LONG,  
9 Respondent.  
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12 Case No. [16-cv-00679-JCS](#) (PR)  
13

**14 ORDER TO SHOW CAUSE;  
15 INSTRUCTIONS TO CLERK**

**16 INTRODUCTION**

17 Petitioner seeks federal habeas relief under 28 U.S.C. § 2254 from his state  
18 convictions.<sup>1</sup> The petition for such relief is here for review under 28 U.S.C. § 2243 and  
19 Rule 4 of the Rules Governing Section 2254 Cases.

20 Respondent shall file a response to the petition on or before June 30, 2016.

21 The petition appears to be untimely. Petitioner was sentenced in 2008 but the  
22 instant petition was not filed until 2016. Respondent is directed to consider first whether a  
23 motion to dismiss on grounds of untimeliness is the most appropriate first response to the  
24 petition. If he so concludes, he may file a motion to dismiss, though he is not required to  
25 do so.

**26 BACKGROUND**

27 According to the petition, in 2008, in the Marin County Superior Court, petitioner  
28 pleaded guilty to charges of kidnapping, robbery, assault with a deadly weapon, assault

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1 with a deadly weapon on a peace officer, impersonating a public officer, making threats,  
2 and various enhancements. He was sentenced to 14 years and 8 months in state prison.

### 3 DISCUSSION

4 This Court may entertain a petition for writ of habeas corpus “in behalf of a person  
5 in custody pursuant to the judgment of a State court only on the ground that he is in  
6 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.  
7 § 2254(a). A district court considering an application for a writ of habeas corpus shall  
8 “award the writ or issue an order directing the respondent to show cause why the writ  
9 should not be granted, unless it appears from the application that the applicant or person  
10 detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is appropriate  
11 only where the allegations in the petition are vague or conclusory, palpably incredible, or  
12 patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).

13 As grounds for federal habeas relief, petitioner claims that (1) his sentence is invalid  
14 under the Fifth, Eighth and Fourteenth Amendments; and (2) defense counsel rendered  
15 ineffective assistance. When liberally construed, these claims are cognizable in a federal  
16 habeas corpus action.

### 17 CONCLUSION

18 1. The Clerk shall serve a copy of this order, the petition and all attachments  
19 thereto, and a Magistrate Judge jurisdiction consent or declination to consent form on  
20 respondent and respondent’s counsel, the Attorney General for the State of California. The  
21 Clerk shall also serve a copy of this order on petitioner.

22 2. Respondent shall file with the Court and serve on petitioner, within ninety (90)  
23 days of the date this order is filed, an answer conforming in all respects to Rule 5 of the  
24 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should  
25 not be granted based on petitioner’s cognizable claims. Respondent shall file with the  
26 answer and serve on petitioner a copy of all portions of the state trial record that previously  
27 have been transcribed and that are relevant to a determination of the issues presented by  
28 the petition.

1       3. If petitioner wishes to respond to the answer, he shall do so by filing a traverse  
2 with the Court and serving it on respondent's counsel within thirty (30) days of the date the  
3 answer is filed.

4       4. In lieu of an answer, respondent may file, within ninety (90) days of the date this  
5 order is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory  
6 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent  
7 files such a motion, petitioner shall file with the Court and serve on respondent an  
8 opposition or statement of non-opposition within thirty (30) days of the date the motion is  
9 filed, and respondent shall file with the Court and serve on petitioner a reply within fifteen  
10 (15) days of the date any opposition is filed.

11       5. Petitioner is reminded that all communications with the Court must be served on  
12 respondent by mailing a true copy of the document to respondent's counsel.

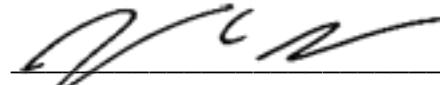
13       6. It is petitioner's responsibility to prosecute this case. Petitioner must keep the  
14 Court and respondent informed of any change of address and must comply with the  
15 Court's orders in a timely fashion. Failure to do so may result in the dismissal of this  
16 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

17       7. Upon a showing of good cause, requests for a reasonable extension of time will  
18 be granted provided they are filed on or before the deadline they seek to extend.

19       8. The Court notes that the filing fee has been paid.

20       **IT IS SO ORDERED.**

21       Dated: March 23, 2016

22         
23       JOSEPH C. SPERO  
24       Chief Magistrate Judge

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4 DAVID CHARLES MOON,  
5 Plaintiff,  
6 v.  
7 DAVID LONG,  
8 Defendant.  
9

10 Case No. 16-cv-00679-JCS  
11

**CERTIFICATE OF SERVICE**

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.  
13 District Court, Northern District of California.

14 That on March 23, 2016, I SERVED a true and correct copy(ies) of the attached, by  
15 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
16 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
17 receptacle located in the Clerk's office.

18 David Charles Moon ID: G13873  
19 California City Correctional Facility (CAC)  
P.O. Box 2760  
California City, CA 93504

20  
21 Dated: March 23, 2016

22 Susan Y. Soong  
23 Clerk, United States District Court

24  
25 By: Karen L. Hom  
26 Karen Hom, Deputy Clerk to the  
27 Honorable JOSEPH C. SPERO  
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